

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia Company,  
and JB EXPLORATION 1, LLC, a  
West Virginia Company,**

**Plaintiffs,**

**vs.**

**BLACKROCK ENTERPRISES, LLC,  
a West Virginia Company, and  
MICHAEL L. BENEDUM,**

**Defendants.**

**Civil Action No.: 18-C-2  
Presiding: Judge Lorensen  
Resolution: Judge Carl**

**FILED IN OFFICE**

**MAR 18 2019**

**JILLIE FARNSWORTH  
CIRCUIT COURT CLERK  
PLEASANTS COUNTY**

**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL**

This matter came before the Court this 18 day of March 2019. The Plaintiffs, BB Land, LLC and JB Exploration 1, LLC, by counsel, Ronda L. Harvey, Esq., and Defendants, Blackrock Enterprises, LLC and Michael L. Benedum, by counsel, Brian R. Swiger, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

**FINDINGS OF FACT**

1. This matter was commenced with the filing of the Complaint on January 11, 2018, alleging claims of breach of contract, tortious interference with a contract, and fraud in

the inducement with regard to a Lease Acquisition Agreement (hereinafter the "LEA") between Plaintiff JB Exploration 1 (hereinafter "Plaintiff") and Defendant Blackrock Enterprises, LLC (hereinafter "Defendant" or "Blackrock"). *See* Compl.; *see also* Pl's Mot., p. 1.

2. Immediately thereafter, Plaintiffs served their First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents on January 12, 2018<sup>1</sup>. *See* Pl's Mot., Ex. A. After various extensions, responses, requests for supplementation, and supplements, Plaintiffs still sought alleged deficiencies in the discovery responses after Blackrock's last supplement on December 21, 2018. *See* Pl's Mot., p. 2-3. Specifically, Plaintiffs alleged there were deficiencies regarding Interrogatory No. 7, Interrogatory No. 9, Request for Production No. 11, Request for Production No. 12, and Request for Production No. 13. *Id.* at 3. Plaintiffs requested supplements to the aforementioned discovery requests by correspondence dated January 23, 2019. *See* Pl's Mot., Ex. D.
3. Meanwhile, on April 2, 2018, the Plaintiffs filed Plaintiffs' Motion to Refer to the Business Court Division, seeking to refer the instant civil action to the West Virginia Business Court Division. Subsequently, this case was assigned to the Business Court Division by the West Virginia Supreme Court of Appeals by Administrative Order dated April 27, 2018.
4. On February 6, 2019, Plaintiffs filed the instant Motion to Compel, seeking an Order from the undersigned compelling Defendant Blackrock to produce documents

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<sup>1</sup> The Court notes Plaintiff caused a copy of the certificate of service of the same to be placed in the court file on January 16, 2018.

responsive to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents. *See* Pl's Mot., p. 1.

5. On February 22, 2019, Blackrock filed its Response in Opposition to Plaintiffs' Motion to Compel, averring the motion should be denied because it seeks to compel it to produce documents it does not currently have in its possession, provide information Plaintiffs already have in their possession, and produce financial information that is not relevant or material to the issues of the case. *See* Def's Resp., p. 2.
6. On March 6, 2019, Plaintiffs filed their Reply in Support of Plaintiffs' Motion to Compel.
7. The Court finds the issue ripe for adjudication.

#### **CONCLUSIONS OF LAW**

Plaintiffs filed the instant Motion to Compel, seeking an Order from the undersigned compelling Defendant Blackrock to produce documents responsive to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents. *See* Pl's Mot., p. 1. Specifically, the Interrogatories and Requests for Production of Documents at issue are Interrogatory No. 7, Interrogatory No. 9, Request for Production No. 11, Request for Production No. 12, and Request for Production No. 13. *Id.* at 3. The requests are regarding the following:

Interrogatory No. 7: Requested Blackrock identify investors or purchasers or potential investors or purchasers that Blackrock communicated with regarding leases acquired by Blackrock under the LEA. *Id.* at Ex. A, p. 4.

Request for Production No. 11: Requested Blackrock produce copies of communications with investors or potential investors regarding Blackrock's LEA interest. *Id.* at 10-11.

Interrogatory No. 9: Requested Blackrock identify any bank accounts or financial institutions that Blackrock maintained during the LEA. *Id.* at 5-6.

Request for Production Nos. 12 and 13: Requested Blackrock provide its profit and loss statements and federal and state income tax returns. *Id.* at 11.

Defendant Blackrock, in its Response, argues the motion should be denied because it seeks to compel it to produce documents it does not currently have in its possession, provide information Plaintiffs already have in their possession, and produce financial information that is not relevant or material to the issues of the case. *See* Def's Resp., p. 2. The issues will be taken up in turn in the hereafter analysis.

Generally,

Civil discovery is governed by the West Virginia Rules of Civil Procedure, Rules 26 through 37. The Rules of Civil Procedure generally provide for broad discovery to ferret out evidence which is in some degree relevant to the contested issue.

Syl. Pt. 1, in part, *Evans v. Mutual Min.*, 199 W.Va. 526, 485 S.E.2d 695 (1997) (internal quotations and citations omitted). Rule 33 provides, in pertinent part, that "any party may serve upon any other party written interrogatories ... to be answered by the party served". W.Va. R. Civ. P. 33 (a). The Rule goes on to require that "[e]ach interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. Requests for Production are governed by Rule 34 of the West Virginia Rules of Civil Procedure which provides, *inter alia*, "[a]ny party may serve on any other party a request (1) to produce ... any designated documents..." This Rule requires parties to respond to this type of request within certain time frames and to "organize and label them to correspond with the categories in the request." W.Va. R. Civ. P. 34 (b).

Further, Rule 37 of the West Virginia Rules of Civil Procedure provides, in pertinent part:

(2) *Motion*. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(7) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant in good faith has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or action without court action.

W. Va. R. Civ. P. 37.

*a. Meet and Confer Requirement*

As an initial matter, the Court first addresses Rule 37's requirement to meet and confer before a motion to compel is filed. Here, Plaintiffs filed a Motion to Compel, arguing sufficient responses were not obtained regarding the above-described discovery requests issued to Defendant Blackrock, which Plaintiffs initially served upon Blackrock on January 13, 2018. *See* Pl's Mot., Ex. A. For over a year, from the initial service of discovery requests served on or about January 13, 2018, to the last good faith correspondence dated January 23, 2019, the parties were in communication. For example, Plaintiffs averred that before the initial thirty day deadline, the parties communicated and agreed to a thirty day extension of time to respond to the subject discovery requests. *See* Pl's Mot., p. 2; *see also* Pl's Mot., Ex. B. Also, subsequent extensions were agreed to by counsels, counsels communicated about mechanisms to access Blackrock's responses via a sharefile website<sup>2</sup>, counsels corresponded about supplementation to the accessed responses, and counsels discussed alleged discrepancies in Blackrock's privilege log. *Id.* at 2-3. Finally, on December 21, 2018, Blackrock supplemented its production, and Plaintiffs aver that as

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<sup>2</sup> The Court notes this sharefile website information was the subject of a previous motion to compel filed on or about June 20, 2018.

it still had not addressed the deficiencies identified in the subject responses, Plaintiffs' counsel requested in good faith that Blackrock supplement its responses by correspondence dated January 23, 2019. *Id.*; *see also* Pl's Mot., Ex. D. The Court's review of this letter reveals it is a detailed request, specifying what Plaintiffs believed was still outstanding and why the information sought was relevant, as well as clearly stating it was a good faith attempt to meet and confer pursuant to Rule 37. *See* Pl's Mot., Ex. D. Specifically, with regard to Rule 37's requirement to meet and confer, the letter stated the following:

"Please accept this letter as our good-faith attempt to resolve these discovery matters amicably as contemplated by West Virginia Rule of Civil Procedure 37. If we have not heard from you soon, we will seek court intervention."

*Id.*

The Court notes Plaintiffs proffered evidence that they then gave Defendants time to respond before filing the instant motion. Plaintiffs aver after the January 23, 2019 meet and confer letter, Blackrock did not provide or produce responsive information, and it filed the instant motion to compel on February 6, 2019. *See* Pl's Mot., p. 4. The Court finds this communication and correspondence meets Rule 37's requirement to meet and confer.

*b. Discovery Requests*

Next, the Court addresses the sought-after discovery responses. First, in the Motion to Compel, Plaintiffs argue Blackrock's responses are incomplete because it did not produce all email correspondence responsive to Plaintiffs' requests. *See* Pl's Mot., p. 4. Specifically, this request relates to correspondence from two individuals who were identified in Interrogatory No. 8, Virgil Larosa and Larry Cavallo. *See* Pl's Mot., Ex. A, p. 5; *see also* Pl's Mot., p. 5. Plaintiffs sought production of any correspondence or that Blackrock state that it did not have any correspondence with Mr. Cavallo or Mr. Larosa. *See* Pl's Reply, p. 11. Subsequent to the filing of the instant

Motion, Blackrock stated it re-searched its email accounts and found additional correspondence. *See* Def's Resp., p. 8. As such, it then provided correspondence of Mr. Cavallo as an attachment to its Response to the instant Motion. *See* Def's Resp., Ex. A. However, no correspondence was likewise produced regarding Mr. Larosa, and no verification was provided that none exists. *See* Pl's Reply, p. 11.

Accordingly, this Court GRANTS the Motion to Compel as to this issue: it is ORDERED that Blackrock either produce correspondence of Virgil Larosa or submit a verification that none exists. Blackrock shall either fully and completely answer and respond to Request for Production No. 11 by providing complete responses as to any correspondence related to Mr. Larosa, or shall submit a verification that none exists within fourteen (14) days of entry of this Order.

Next, the Court examines Plaintiffs' request for financial records. As stated, Plaintiffs seek production of various financial records of Blackrock's, including identification of bank accounts or financial institutions that it maintained during the LEA, as well as profit and loss statements and federal and state income tax returns. *See* Pl's Mot., p. 7. This information is all being sought from the year 2013 to the present.

Plaintiffs argue this financial discovery is necessary to support causes of action surrounding Blackrock's ability to participate in LEA leases and area of mutual interest (hereinafter "AMI") wells. *Id.* On the other hand, Blackrock argues that this information is overly broad, irrelevant to the issues in this case, and outside of the scope of the pleadings. *See* Def's Resp., p. 8. Blackrock has objected to these requests. *See* Pl's Mot., Ex. A; *see also* Def's Resp., p. 9. Blackrock avers these requests are "oppressive on their face and are only intended to harass Blackrock". *See* Def's Resp., p. 9. Blackrock urges that the requests are not material or relevant to whether Blackrock had the ability to participate in the joint development of the LEA leases, as

the parties' roles were clearly defined by agreement and included an additional, elective opportunity to acquire an additional interest. *Id.* at 10.

Here, the Court considers the role financial information plays in the allegations in this case. Plaintiffs allege they have "carried the entirety of the risk to develop the LEA leases" and that to date, "Blackrock has not contributed any money for its proportionate share of the costs incurred by Plaintiffs to drill wells". *See* Pl's Reply, p. 9. Plaintiffs have further alleged that Blackrock "fraudulently misrepresented its ability to contribute financially to wells drilled by Plaintiffs to develop the LEA leases". *Id.* Further, it is alleged that "Blackrock's counsel purported to provide Plaintiff BB I and with proof that Blackrock had sufficient capital to cover its proportionate share of wells costs, but Blackrock indicated that it barely had sufficient funds to cover its share of costs for the initial wells" drilled. *See* Pl's Mot., p. 7-8. Plaintiffs have demonstrated that the financial information directly relates to their allegations in Paragraphs 65-67 in the Complaint. *Id.* at 8.

Further, with regard to the lease participation, Plaintiffs have alleged that Blackrock represented that it entered into the LEA with the intent to acquire its full LEA interest. *Id.* at 8-9. There are further allegations of comingling funds. *Id.* at 9. Plaintiffs allege that discovery has indicated that Defendant Michael Benedum has comingled funds with Blackrock during the LEA. *Id.* For instance, it was alleged that Benedum loaned Blackrock \$50,000.00 by check, and on another occasion exercised Blackrock's purchased interest as to a tract of land with a check drawn from his personal checking account. *Id.*

For these reasons, the Court finds Plaintiffs' request for financial information contained in the subject discovery requests is relevant and material to the causes of action in the case at bar. The financial information is necessary for evaluating crucial issues of the case regarding Blackrock's ability to participate in the oil and gas development central to this litigation. The



financial information is necessary for the crux of Plaintiffs' argument that Blackrock made misrepresentations regarding financial matters.

The Court notes limitations have been put in place for the protection of the parties. First, the financial information is only sought for the years in the LEA's term. *See* Pl's Reply, p. 10. Further, the parties entered into an agreed protective order that ensures Blackrock's financial information will not be disclosed. *Id.* For all of the foregoing reasons, the Court finds Plaintiffs' motion shall be granted as to these requests for financial information. Accordingly, Interrogatory No. 9, Request for Production No. 12, and Request for Production No. 13 shall be fully answered by Blackrock. Blackrock shall provide complete responses to Interrogatory No. 9, Request for Production No. 12, and Request for Production No. 13 within fourteen (14) days of entry of this Order.

*c. Request for Attorney's Fees*

Finally, the Court addresses the request for sanctions. Rule 37(a)(4) governs the award of sanctions pursuant to a motion to compel. Rule 37(a)(4)(A) provides, in pertinent part:

If the motion is granted, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's answer, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

W. Va. R. Civ. P. 37.

In this case, the Court considers that it has found good cause to grant the Plaintiffs' Motion to Compel. Further, the Court considers a pattern of Plaintiffs working with Blackrock to obtain

the sought-after discovery for over one (1) year. The Court further considers the fact that Blackrock did not re-search its email accounts and turn over the correspondence as to Mr. Cavallo until after the instant motion was filed. Because of the foregoing reasons, and because the Court found good cause exists to grant the Motion to Compel, the Court finds Plaintiffs' request for attorney's fees is warranted and shall be granted.

If not already done so, counsel for Plaintiffs shall submit and file a proposed order granting its request for attorney's fees and costs associated with the costs of litigating the Motion to Compel, along with fee affidavits and any other appropriate supporting material, setting forth the necessary legal and factual support for the amount of attorney's fees and costs to be awarded within fourteen (14) days of the entry of this Order.

#### **CONCLUSION**

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiffs' Motion to Compel is hereby GRANTED. Additionally, it is hereby ADJUDGED and ORDERED that the Court ORDERS the following:

1. Plaintiffs' request for attorney's fees is GRANTED, insomuch as the Court orders the appropriate sanctions to be the attorney's fees and expenses related to the costs of this motion, to be sanctioned onto Defendant Blackrock only and not the other Defendant in this civil action;
2. Counsel for Plaintiffs shall submit and file a proposed order granting its request for attorney's fees and costs associated with the costs of litigating the Motion to Compel, along with fee affidavits and any other appropriate supporting material, setting forth the necessary legal and factual support for the amount of attorney's fees and costs to be awarded within fourteen (14) days from the date of entry of this Order. If necessary

to preserve a privilege, supporting material may be filed and served upon all parties with appropriate redactions. If requested by the Court, the parties shall submit unredacted versions of the same to the Court for *in camera* review;

3. Any failure by Defendant Blackrock to comply with the Orders of this Court compelling discovery responses may result in the full range of sanctions under Rule 37 of the West Virginia Rules of Civil Procedure; and
4. The parties shall proceed with this case pursuant to the West Virginia Rules of Civil Procedure, all other applicable law, and any scheduling orders entered by this Court.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.



JUDGE MICHAEL D. LORENSEN  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION

I hereby certify that the annexed  
instrument is a true and correct copy  
of the original on file in my office.  
Attest: Millie Farnsworth, Circuit Clerk  
Pleasants County of West Virginia

